IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1978 OF 2005

Nashik Municipal Corporation ...Petitioner

Versus

Nashik Mahanagarpalika Shramik Sangh & others ...Respondents

.....

Mr. V.A. Gangal, counsel for Petitioner

Mr. Bhavesh Parmar with Mrs. Vijaya Jagtap, counsel for Respondent No.1.

Mr. Sudhir Talsania with Mr.S.S. Deshmukh for Respondent No. 2.

Mr. A.H. Palekar, A.G.P. for Respondent Nos. 3 and 4.

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ALONGWITH
WRIT PETITION NO. 2678 OF 2005

Ramrao Tukaram Patil Choudhary ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

.....

Mr. Sudhir Talsania with Mr. S.S. Deshmukh for Petitioner.

Mr. V.A. Gangal, counsel for Respondents 3 & 5.

Mr. A.H. Palekar, A.G.P. for Respondents 1 and 2.

Mr. Bhavesh Parmar with Mrs. Vijaya Jagtap, counsel for Respondent No.4.

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CORAM: B. H. MARLAPALLE, J.
DATED: 5TH MAY, 2005

P. C.:-

1. Heard the learned counsel for the petitioners.

2. Rule. Respondents waive service.

3. The first petition has been filed by the Nashik Municipal Corporation whereas the second petition has been filed by one Ramrao Tukaram Patil-Choudhary who has been engaged as a contractor by the Nashik Municipal Corporation for collection and transportation of the solid waste and therefore, both these petitions have challenged the order passed by the Assistant Labour Commissioner at Nashik on 21.2.2005 and are required to be decided by a common order.

4. The respondent No.1 Union in writ petition No. 1978 of 2005 had approached this Court earlier in Writ Petition No. 3993 of 2004 with a grievance that the Corporation and the Contractor engaged by it, were not paying wages to the workers engaged by the contractor, at the rates prescribed under the Minimum Wages Act, 1948 and more particularly as per the G.R. dated 15.2.2003. After hearing the parties the concerned Division Bench disposed of Writ Petition No. 3993 of 2004 on 5.7.2004 by directing the Assistant Commissioner of Labour to investigate into the grievance of contract workmen listed at Exh.A to that petition and to adjudicate the rolls of respondent Nos. 1 and 4 individually and collectively for determining the wages payable to

such workers as per notification dated 15.2.2003. Pursuant to the said order, the parties appeared before the Assistant Commissioner of Labour to conduct the enquiry. There were in all 316 contract workmen as on 24.8.2004 and the contractor, Municipal Corporation and the Union were issued notices for hearing. During the course of investigation, hearings were held on 24.8.2004, 24.9.2004, 8.10.2004, 1.11.2004, 20.11.2004, 4.12.2004, 18.12.2004, 7.1.2005, 14.1.2005, 19.1.2005 and 20.1.2005. By taking into consideration the provisions of Minimum Wages Act, 1948 as well as the Contract Labour (Regulation and Abolition) Act, 1971, the Assistant Labour Commissioner in the impugned order has held that at the first instance it is the responsibility of the contractor to pay wages at the agreed rates and in case of his failure to do so, it is the principal employer who has to discharge this liability and in the instant case the principal employer is undoubtedly the Nashik Municipal Corporation. The Assistant Commissioner of Labour has also noted that the contractor was issued a licence under the Contract Labour Act and, therefore, the terms of licence were applicable to the contractor as well as the principal employer. On calculations, the Assistant Labour Commissioner held that the arrears in wages on account of difference in the wages payable as per the G.R. dated 15.2.2003

and the actual wages paid, worked out to Rs.13,14,307/- and the Nashik Municipal Corporation has been directed to deposit the said amount within seven days from 21.2.2005. Admittedly, the Municipal Corporation has not yet deposited the said amount and may be on account of pendency of these petitions.

5. After considering the directions given by this Court in Writ Petition No. 3993 of 2004 and provision of Section 20(1) of the Minimum Wages Act, 1948 as well as the provisions of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1971 and the reasoning given by the Assistant Labour Commissioner in the impugned order, I do not find any fault with the arrears amount fixed at Rs.13,14,307/- and the directions to the Municipal Corporation to deposit the same with the office of the Deputy Labour Commissioner at Nashik. The Assistant Labour Commissioner has followed the directives of this Court and worked out the balance of amount payable in toto. However, para 2 of the operative part of the impugned order reads as under:-

> "The Respondent No.1 shall also deposit the amount of compensation of all contract workmen as shown in the Annexure-A amounting to Rs.92,00,149/- (Ninety two lac one hundred

forty nine only) within one month from the date of this order with this Authority".

6. This Court in its order dated 5.7.2004 had assigned limited brief to the Assistant Labour Commissioner and he was not given powers to impose penalty under Section 20(3) of the Minimum Wages Act, 1948. Section 20(1) in fact does not empower to an Officer of the rank less than Labour Commissioner to levy such penalty, even otherwise. The Assistant Labour Commissioner was merely assigned the task to calculate the difference in wages payable to workmen engaged by the contractor and that too at the instance of the Municipal Corporation. Hence, the second part of the impugned order viz. levy of penalty cannot be sustained.

7. The petitions are therefore, allowed partly. The impugned order calculating the difference of amount payable at Rs.13,14,307/- is hereby confirmed and the Nashik Municipal Corporation is hereby directed to deposit the said amount with the office of the Deputy Labour Commissioner at Nashik within a period of two weeks from today. The order levying penalty/compensation of Rs.92,00,149/- is hereby quashed and set aside but without prejudice to the power of the appropriate authority in the proceedings

to be adjudicated upon, if any, under Section 20 of the Minimum Wages act, 1948.

8. The Deputy Labour Commissioner, Nashik shall appoint a competent officer for disbursing the difference of wages payable to each of the contract labour out of the total amount of Rs.13,14,307/- and the disbursement process shall start immediately after the amount is deposited by the Municipal Corporation. Undoubtedly, the disbursement of the amount to the contract labour shall be made on verification of individual attendance with the contractor as well as the Municipal Corporation, if any.

9. Rule made absolute accordingly with no order as to costs.

10. It is further clarified that this order will not in any way affect the rights and contentions of the contractor and the Municipal Corporation amongst themselves.

11. Certified copy is expedited. Writ to go forthwith.

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